

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Standardized and Enhanced Disclosure) MM Docket No. 00-168
Requirements for Television Broadcast)
Licensee Public Interest Obligations)

**PETITION OF THE NATIONAL ASSOCIATION OF BROADCASTERS
FOR STAY PENDING JUDICIAL REVIEW**

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INTRODUCTION

The National Association of Broadcasters (“NAB”), pursuant to Sections 1.41 and 1.43 of the Commission’s rules,¹ hereby requests that the Commission stay the implementation of the Second Report and Order it adopted April 27, 2012, requiring television broadcast stations to post online the entirety of their public files, including competitively sensitive information about political advertising rates.² NAB has filed a petition for review of the *Order* with the U.S. Court of Appeals for the District of Columbia Circuit.³ The Commission should stay the *Order*’s implementation pending the completion of judicial review.

This case satisfies the requirements for a stay. NAB is likely to succeed on the merits because the Commission engaged in arbitrary and capricious decisionmaking by disregarding the competitive harm that is likely to result from the *Order*, rejecting an alternate proposal that would largely avoid those harms, and departing from provisions of the Bipartisan Campaign Reform Act (BCRA) of 2002, Pub. L. No. 107-55, 116 Stat. 81. NAB’s members will suffer irreparable harm absent a stay because the *Order* compels television stations to post the prices

¹ 47 C.F.R. §§ 1.41, 1.43.

² *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Public Interest Obligations*, MM Docket No. 00-168, Second Report and Order, FCC 12-44, at ¶¶ 2, 39 (2012) (the “*Order*”).

³ *Nat’l Assoc. of Broadcasters v. FCC*, No. 12-1225 (D.C. Cir. docketed May 21, 2012).

for specific advertisements to a public website immediately after the sales occur. This will place NAB's members at a disadvantage to non-broadcast competitors, who are not required to post rate information on the Internet. The balance of hardships and the public interest also favor a stay because the likely harm from requiring immediate posting of detailed price information about specific advertising sales outweighs the benefits of such a requirement.

BACKGROUND

1. Television stations are required to maintain a "political file," which includes a record of every request for political time made by a candidate or national political issue advertiser and the broadcaster's responses, including the date and time ads are aired and the per-spot cost to the advertiser. *See* 47 U.S.C. § 315(e); 47 C.F.R. § 73.1943(a). The record must be created "immediately absent unusual circumstances." 47 C.F.R. § 73.1943(c).

Congress has enacted detailed requirements concerning disclosure of political expenditure and advertising information. BCRA provides that certain political *expenditure* information must be "accessible to the public on the Internet" and directs the Federal Election Commission to "maintain a central site on the Internet" for expenditure information. BCRA §§ 501, 502 (codified at 2 U.S.C. §§ 434(a)(11)(B), 438a). In contrast, BCRA does not require broadcasters to post information concerning political advertising *sales* online, nor does it direct the

FCC to create a website for such material. Instead, BCRA requires television stations to “maintain, and make available for public inspection,” paper records with respect to requests for purchase of broadcast time that are made by candidates or “communicate[] a message relating to any political matter of national importance.” *Id.* § 504 (codified at 47 U.S.C. § 315(e)(1)).⁴

2. In 2000, the Commission initiated a proceeding to “determine whether [its] current requirements pertaining to television stations’ public inspection files are sufficient to ensure that the public has adequate access to information on how the stations are serving their communities.”⁵ In 2007, the Commission adopted a requirement that television broadcasters place their public files on their websites.⁶ The Commission’s rule expressly *exempted* the “political file” portion of broadcasters’ public file from this requirement, finding that “the burden of placing this material on the Internet outweighs the benefits.”⁷ The Commission found that “[d]aily and even more frequent requests for access by political candidates and their campaign personnel, combined with a need for the station to update the file

⁴ Although the FCC never amended its rules to implement BCRA, television stations generally place records covered by BCRA in the “political file” they maintain under 47 C.F.R. § 73.1943.

⁵ *In re Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report & Order, MM Docket Nos. 00-168 and 00-44, FCC 07-205 (rel. Jan. 24, 2008), 23 FCC Rcd. 1274, 1275, ¶ 1 (2008) (citing *Notice*, 15 FCC Rcd. 19186 (2000)).

⁶ *Id.* ¶¶ 8–17.

⁷ *Id.* ¶ 20.

frequently, may make requiring the station to place this material on the Internet inappropriate,” and that “[p]olitical candidates and campaigns make heavy use of the file and require quick access to material, and if the volume of material is too great, the station may not be able to update the Internet file quickly enough.”⁸

NAB and other parties sought review of the 2007 Report and Order in this Court, which held the challenges in abeyance pending the Commission’s reconsideration.⁹

3. In October 2011, the Commission vacated the 2007 Report and Order and issued a Further Notice of Proposed Rulemaking in which it proposed to reverse its 2007 decision that the political file should be exempted from the online public file requirement and require television broadcasters to post their political files to a Commission-hosted website.¹⁰ The Commission explained its change in position on the ground that it had “learned [since 2007] that the vast majority of television stations handle political advertising transactions electronically.”¹¹

⁸ *Id.*

⁹ Order, *Nat’l Ass’n of Broadcasters v. FCC*, Nos. 08-1135 *et al.* (D.C. Cir. July 11, 2008). The petition for review was dismissed on petitioners’ motions prior to merits briefing and oral argument.

¹⁰ *In re Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, etc.*, Order on Recon. & Further Notice of Proposed Rulemaking, MM Docket Nos. 00-168 and 00-44, FCC 11-162 (rel. Oct. 27, 2011), 26 FCC Rcd. 15788, 15799–801, ¶¶ 22–23 (2011) (“FNPRM”).

¹¹ *Id.* ¶ 23.

NAB and other commenters explained that the Commission's perception of the political advertising sales process was incorrect. Negotiations between candidates go on continuously during the political season and often occur by telephone. Consequently, requiring broadcasters to post detailed records of political ad buys on the Internet on an almost real-time basis would impose a significant burden on television stations. Moreover, the broadcasters explained, such a requirement would raise potential antitrust issues and place television stations at a competitive disadvantage to cable and satellite television, as well as other sellers of local advertising.¹² In supplemental comments, NAB argued that imposing an online publication requirement for stations' political files is contrary to BCRA.¹³ Television broadcasters submitted compromise proposals that would require television stations to post aggregated data concerning individual political advertisers, but would not require immediate disclosure of spot-by-spot advertising rates.¹⁴

4. The Commission's *Order* requires online publication of political files. The *Order*, *inter alia*, rejects as vague and unsubstantiated broadcasters' concerns that requiring the political file to be posted online immediately would harm compe-

¹² See, e.g., NAB FNPRM Comments (filed Dec. 22, 2011), at pp. 3–22.

¹³ See NAB Supplemental Comments, MM Docket Nos. 00-168 and 00-44 (filed Mar. 8, 2012).

¹⁴ See Television Station Groups *Ex Parte*, MM Dkt. Nos. 00-168 & 00-44 and MB Dkt. No. 11-189 (filed Feb. 15, 2012); Television Station Groups *Ex Parte*, MM Dkt. Nos. 00-168 & 00-44 (filed Apr. 20, 2012).

tition. *See Order* ¶¶ 38–39. The *Order* finds that the alternative proposal to post aggregated data online would deprive the public of the benefits of immediate online access to the political file. *See id.* ¶ 57 n.6. In addition, the *Order* interprets BCRA to allow the Commission to require online publication of the political file, in its discretion. *See id.* ¶ 52. Finally, the *Order* concludes that the political file requirement is consistent with the First Amendment on the ground that disclosure promotes, rather than chills, speech and discussion. *See id.* ¶ 80.

5. On May 11, 2012, the Commission published the *Order* in the *Federal Register* as a Final Rule. 77 Fed. Reg. 27631. On May 21, 2012, NAB filed a timely petition for review of the *Order* in this Court. *See* Docket, Case No. 12-1225.¹⁵ On July 3, 2012, the Commission published a notice in the *Federal Register* announcing OMB’s approval of the *Order* under the Paperwork Reduction Act and indicating that the *Order* would be effective on August 2, 2012. 77 Fed. Reg. 39439.

STANDARD OF REVIEW

The Commission will stay the effectiveness of an order pending judicial review when the petitioner demonstrates: (1) it is likely to prevail on the merits of its petition for review; (2) it will suffer irreparable harm in the absence of a stay; (3) a

¹⁵ Multiple television broadcasters filed a petition for reconsideration and proposed a further compromise proposal to the FCC on June 11, 2012. *See* Television Station Group Petition for Reconsideration, MM Dkt. Nos. 00-168 & 00-44 (filed June 11, 2012).

stay will not injure other parties; and (4) a stay is in the public interest.¹⁶ The Commission balances these factors, with no single factor being dispositive.¹⁷

ARGUMENT

I. NAB Is Likely to Prevail on the Merits.

A. Imposing an Online Publication Requirement for Television Broadcasters' Political Files Is Arbitrary and Capricious.

1. The Commission's *Order* requires television stations to "immediately" post on the Internet detailed information about the rates charged for specific advertisements. This requirement raises serious antitrust concerns. As Commissioner McDowell noted, "if antitrust authorities learned that broadcasters were sharing pricing information market-by-market," broadcasters "would be sued for antitrust violations." Statement of Commissioner Robert M. McDowell Approving in Part, Dissenting in Part, FCC 12-44, 2012 WL 1513776, at *55 (Apr. 27, 2012) (hereinafter "McDowell Statement"). "[F]orcing broadcasters to do what would otherwise be illegal is simply surreal," *id.*, particularly when alternative proposals would enhance disclosure without harming competition.

a. Exchanges of information concerning the "most recent price charged or quoted" may violate the antitrust laws even if there is no agreement to adhere to

¹⁶ *In the Matter of Review of Part 87 of the Commission's Rules Concerning the Aviation Radio Service*, WT Docket No. 01-289, Order, 26 FCC Rcd 685, 687 n.16 (2011).

¹⁷ *Id.*

any particular prices, the exchanges occur only on an irregular basis, and the information is sometimes fragmentary. *United States v. Container Corp. of Am.*, 393 U.S. 333, 335–36 (1969); *see also United States v. United States Gypsum Co.*, 438 U.S. 422 (1978). Exchanges of information about the most recent price charged or quoted are likely to have “an anticompetitive effect in the industry, chilling the vigor of price competition.” *Container Corp.*, 393 U.S. at 337; *see also id.* at 339–40 (Fortas, J., concurring) (price information concerning specific sales to specific customers tends to “stabilize” prices).¹⁸ In this case, unlike *Container Corp.*, the exchanges would occur on a continuous basis rather than an irregular basis, and would be comprehensive rather than fragmentary. *See Todd v. Exxon Corp.*, 275 F.3d 191, 213 (2d Cir. 2001) (“[T]he frequency of the meetings is itself problematic . . .”).¹⁹

The federal antitrust enforcement agencies have issued guidelines warning that information exchanges among competitors “may increase the likelihood of

¹⁸ *See also Cent. & S. Motor Freight Tariff Ass’n, Inc. v. United States*, 777 F.2d 722, 732 (D.C. Cir. 1985) (“[S]uch compilation and dissemination of rate information would subject the Associations and their members to severe antitrust risk.”); *King & King Enters. v. Champlin Petroleum Co.*, 657 F.2d 1147, 1151–52 (10th Cir. 1981); *United States v. Airline Tariff Publ’g Co.*, 836 F. Supp. 9 (D.D.C. 1993); *United States v. Brink’s, Inc.*, 1979-2 Trade Cas. ¶ 62,902 (N.D. Ga.); *United States v. FMC Corp.*, 306 F. Supp. 1106 (E.D. Pa. 1969); accord HERBERT HOVENKAMP, 13 ANTITRUST LAW ¶ 2113e, at 97–98 (2d ed. 2005) (“direct interseller communications of current prices on specific transactions” should be treated as a “nearly naked” restraint of trade).

¹⁹ Although the television stations will be compelled to publish the price information (and therefore there will be no “agreement” in restraint of trade for purposes of Section 1 of the Sherman Act), posting detailed, current pricing information is likely to have significant anticompetitive effects.

collusion on matters such as price, output, or other competitively sensitive variables.” Fed. Trade Comm’n & U.S. Dep’t of Justice, Antitrust Guidelines for Collaborations Among Competitors § 3.31(b) (2000), *reprinted in* 4 Trade Reg. Rep. (CCH) ¶ 13,161 *and available at* <http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf>. The guidelines note that “the sharing of information relating to price . . . is more likely to raise competitive concern” than the sharing of other types of information, and that “the sharing of individual company data is more likely to raise concern than the sharing of aggregated data.” *Id.*; *accord Exxon Corp.*, 275 F.3d at 211–13 (exchange of current data that identifies “particular parties, transactions, and prices” signals anticompetitive behavior). The Commission’s *Order* raises *all* these concerns: It concerns *prices* – the most competitively sensitive topic of all – and it involves *immediate* sharing of *individual company* data about *specific transactions*.²⁰ As one commentator noted, making “sensitive price information available to a television station’s customers and competitors at the click of a mouse” is “at odds with the commonsense view that the sharing of pricing information

²⁰ The Antitrust Division and the FTC have established a “safety zone” for exchanges of price and cost information. *See* U.S. Dep’t of Justice & Fed. Trade Comm’n, Statement of Antitrust Enforcement Policy in Health Care (1996), *reprinted in* 4 Trade Reg. Rep. (CCH) ¶ 13,153 *and available at* <http://www.ftc.gov/reports/hlth3s.pdf>. These guidelines require that the price information should be more than three months old, and that any information be aggregated so that it is not possible to identify the prices charged by any particular market participant. *See id.* at 50. The *Order* does not come close to meeting these guidelines. The pricing information is not more than three months old; it is posted on the Internet “immediately.” No steps are taken to aggregate the pricing information. Instead, the *Order* requires the release of detailed information about the prices charged for *specific* transactions.

among rival sellers is unhealthy for competition.” Reply Comments of Network Station Owners, MM Dkt. No. 00-168 (filed Jan. 17, 2012), at pp. 12–14.

b. The Commission concluded that posting political advertising rates on the Internet will cause no significant harm because this information is already available for public inspection in paper files located at individual television stations. *See Order* ¶ 39; *id.* ¶ 111 n.11. This conclusion conflicts with the basic rationale for the Commission’s *Order*. The Commission determined that access to paper files is “limited” by current procedures, which require persons seeking access to visit a television station’s main studio during regular business hours. *Id.* ¶ 13. Under the current rules, a competitor wishing to gather price data from a number of stations would be required to make separate visits to multiple stations. In contrast, “[m]aking the information available online will permit 24-hour access from any location, without requiring a visit to the station, thereby greatly increasing public access to information.” *Id.* Because price data is highly time-sensitive, greatly reducing the time and effort required to gather current pricing data is likely to have a significant market impact. As the FTC has warned, “[t]he Internet allows firms to share information at an unprecedented rate,” enabling market participants to “learn in real time, for example, the identities of the purchaser and seller in a transaction, the quantity purchased, the date and time of the transaction, and the purchase price.” This efficient exchange of information “might injure competition by facili-

tating price or other anticompetitive coordination.” Fed. Trade Comm’n Staff Report, *Entering the 21st Century: Competition Policy in the World of B2B Electronic Marketplaces*, Executive Summary, at 2 (2000), *available at* <http://www.ftc.gov/os/2000/10/b2breport.pdf>.²¹

c. The *Order* will also distort competition by giving non-broadcast media asymmetrical access to information about local advertising rates. *See* Reply Comments of the Joint Television Parties, MM Dkt. Nos. 00-168 & 00-44 (filed Jan. 17, 2012), at p. 15 (online publication will cause “‘market distortions’ that favor other media”). Cable and satellite television operators, as well as other media that compete for local advertising, are not subject to the immediate Internet disclosure requirement.²² As a result, “[o]ne poker player would, in effect, have had at least a partial glance at the other’s hand.” *Order* ¶ 38 (quoting Reply Comments of Network Station Owners, at p. 14). This information asymmetry will give non-

²¹ Courts have reached a similar conclusion in the context of online publication of judicial records. *See, e.g., Hollingsworth v. Perry*, 130 S. Ct. 705, 713 (2010) (granting stay of order posting trial proceedings to Internet because, *inter alia*, “[t]here are qualitative differences between making public appearances regarding an issue and having one’s testimony broadcast throughout the country”); Peter W. Martin, *Online Access to Court Records—From Documents to Data, Particulars to Patterns*, 53 VILL. L. REV. 855, 883 (2008) (state courts have “take[n] a very cautious approach to online public access,” and in model guidelines have limited online, remote public access to summary or general indices that pose “‘little risk of harm to an . . . unwarranted invasion of privacy or proprietary business interests’”).

²² Cable and satellite operators must disclose their political rates, but are not required to publish them online. *See* 47 C.F.R. §§ 76.1701, 25.701(d). At a minimum, the Commission’s failure to impose an Internet disclosure obligation on cable and satellite providers, as well as television stations, is arbitrary and capricious. *Cf. Sinclair v. FCC*, 284 F.3d 148, 164 (D.C. Cir. 2002) (FCC acted arbitrarily and capriciously when it failed to explain why its local television ownership rule did not take cable and other media into account when its other ownership rules did so).

broadcasters an opportunity to shift advertising away from over-the-air television stations to these other media. *See* Reply Comments of Network Station Owners, at pp. 14–15 (cable systems will “have extensive information about their competitors’ pricing”).

The competitive disadvantage will extend to commercial advertising sales as well as political advertising. By law, candidate rates during specified periods of time must be based on the lowest rate charged to a commercial advertiser for a comparable advertising spot. Immediate publication of these rates on the Internet will give competitors and potential advertising customers near real-time access to a television broadcaster’s best commercial rate.²³ Issue ad rates, unlike rates charged to candidates, are not regulated by BCRA, so the rate offered to an issue advertiser is often in effect a commercial rate. *See, e.g.,* Ex. 1, Drafts Declaration, at ¶¶ 5, 13. Thus, the *Order* requires television stations to post on the Internet current information on *non-candidate* commercial rates.

d. The Commission acknowledged that “several parties raised the claim of ‘commercial harm,’” but discounted the claim as “little more than generalized and vague assertions.” *Order* ¶ 39. That commenters forecasted future commercial harm does not relieve the Commission of its duty to address these concerns. *See*

²³ For periods outside certain pre-election windows, the rates provided to candidates are the station’s standard commercial rates. *See* 47 U.S.C. § 315(b)(1)(B).

Bus. Roundtable v. SEC, 647 F.3d 1144, 1152 (D.C. Cir. 2011) (SEC acted arbitrarily by failing to respond to comments arguing that certain investors “can be expected to pursue self-interested objectives rather than the goal of maximizing shareholder value”). Here, the Commission was not presented with “purely speculative” comments that “do not disclose the factual or policy basis on which they rest.” *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 36 n.58 (D.C. Cir. 1977). Disclosure of detailed, current price information on the Internet clearly is problematic under the antitrust laws, and clearly creates an informational disparity. Moreover, the Commission itself concluded that the information is likely to be far more accessible on a single Internet site than in paper files at multiple locations. There is thus more than “some basis for thinking [the] position taken in opposition to the agency is true.” *Id.*

In sum, the Commission has no authority to create exceptions to the antitrust laws. See *United States v. Radio Corp. of Am.*, 358 U.S. 334, 339–46 (1959); *Midland Telecasting Co. v. Midessa Television Co.*, 617 F.2d 1141, 1149 (D.C. Cir. 1980). By brushing aside the serious anticompetitive implications of its *Order*, the Commission fails to address an “important aspect of the problem.” *Motor Vehicle Mfrs. Ass’n of Am. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

2. The Commission’s decision is particularly vulnerable because the agency rejected an alternative approach that would largely avoid the anticompetitive con-

cerns. Under a compromise proposal submitted by several television station groups, television stations would be required to report online the total number of dollars spent by each candidate or other political advertiser on that station, compiled on a weekly, every-other-day, or daily basis depending on the political season. *See supra* notes 14–15. More detailed spot-by-spot information would continue to be available in the station’s paper file, but would not be posted on the Internet.²⁴

The alternative proposal would post aggregated information to mitigate the anticompetitive consequences of posting current price information about specific advertising transactions. Similar aggregation requirements commonly are employed to allay antitrust concerns. *See supra* Part I.A.1.a. The *Order* summarily rejects this alternative approach on the ground that it would “deprive the public of the benefits of immediate online access to *all* the information in the political file.” *Order* ¶ 57 n.6 (emphasis added). But the *Order* does not explain why weekly (or more frequent) posting of aggregated data, supplemented by review of paper files as needed, is not sufficient to meet the goals of public disclosure. The Commission’s rejection of the alternative proposal was arbitrary and capricious. *See ACLU v. FCC*, 823 F.2d 1554, 1581 (D.C. Cir. 1987) (agency action is arbitrary unless it

²⁴ Commissioner McDowell offered a similar compromise proposal. *See* McDowell Statement, 2012 WL 1513776, at *55.

“responds to significant points raised by the public” (citation and quotation marks omitted)).

B. Requiring Online Publishing for TV Broadcasters’ Political Files Is Inconsistent with BCRA.

1. When Congress enacted BCRA it specified that certain election-related records should be made available on an FEC website as well as for hard-copy inspection. *See* BCRA § 501 (codified at 2 U.S.C. § 434(a)(11)(B)) (political expenditure information shall be “accessible to the public on the Internet”); *id.* § 502(a) (codified at 2 U.S.C. § 438a(a)) (FEC shall “maintain a central site on the Internet to make accessible to the public” election-related information). In contrast, Congress adopted a hard-copy inspection requirement for broadcasters, but did *not* require online publication. *See* BCRA § 504 (codified at 47 U.S.C. § 315(e)). Nor did BCRA instruct the FCC to maintain a website for broadcasters’ political files. Moreover, when Congress wanted the Commission to publish election advertising-related information on its website, it said so explicitly. *See* BCRA § 201(b) (codified at 2 U.S.C. § 434 note) (instructing FCC to “compile and maintain any information the [FEC] may require” to carry out certain disclosure responsibilities, and to “make such information available to the public on the [FCC’s] website”).

“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Con-

gress acts intentionally and purposely in the disparate inclusion or exclusion.” *Russello v. United States*, 464 U.S. 16, 23 (1983) (alteration in original) (citation and quotation marks omitted). Under this “basic tenet[] of statutory interpretation,”²⁵ the Commission was barred from imposing video description requirements where the relevant statute specifically authorized the Commission to impose only closed captioning. *See MPAA v. FCC*, 309 F.3d 796, 802 (D.C. Cir. 2002); *see also Indep. Bankers Ass’n of Am. v. Farm Credit Admin.*, 164 F.3d 661, 667 (D.C. Cir. 1999) (farm-related businesses could not receive loans from farm credit banks for activities not listed in the relevant statute even though another provision referenced loans for “any . . . purpose”).

The *Order* concludes that the language and structure of BCRA is either (i) ambiguous or (ii) indicates congressional approval of the Commission’s then-two-year-old proposal to require Internet publication. *See Order* ¶ 52. These justifications are erroneous. As this Court has stated, statutes typically are “not written in ‘thou shalt not’ terms.” *Ry. Labor Executives’ Ass’n v. Nat’l Mediation Bd.*, 29 F.3d 655, 671 (D.C. Cir. 1994) (en banc). When Congress expressly instructs the Commission to act in one area, it “supports the conclusion that the FCC is barred” from taking analogous action in another area covered by the same statute. *MPAA*,

²⁵ *Vill. of Barrington, Ill. v. Surface Transp. Bd.*, 636 F.3d 650, 661 (D.C. Cir. 2011).

309 F.3d at 802; *see also Ass'n of Commc'ns Enters. v. FCC*, 235 F.3d 662, 665–68 (D.C. Cir. 2001). Had Congress intended that television broadcasters publish their political files online to an FCC website, it would have said so in BCRA.

2. Interpreting BCRA to allow the Commission's *Order* also raises First Amendment concerns. “[C]ourts make every effort to construe statutes so as to . . . avoid needless constitutional confrontations.” *Nat’l Mining Ass’n v. Kempthorne*, 512 F.3d 702, 711 (D.C. Cir. 2008). In upholding BCRA Section 504’s “election message request” requirement against a facial constitutional challenge, the Supreme Court found that its “recordkeeping requirements do not reach significantly beyond other Commission recordkeeping rules,” and “will [not] impose disproportionate administrative burdens.” *McConnell v. FEC*, 540 U.S. 93, 238–40 (2003). The Court also upheld against a facial challenge BCRA Section 504’s “issue request requirement,” despite ambiguity over the administrative burden imposed, because the Commission “has often ameliorated regulatory burdens by interpretation in the past, and there is no reason to believe it will not do so here.” *Id.* at 242. Rather than ameliorate these concerns, the *Order*’s imposition of additional, disproportionate burdens raises significant First Amendment concerns.²⁶ *See John Doe*

²⁶ *See Target Media Ex Parte Presentation*, MM Dkt. No. 00-168 (filed Apr. 19, 2012), at p. 16 (“This type of online disclosure raises serious privacy concerns and places an unreasonable burden on individuals’ First Amendment right to participate in political speech.”); *Comments of National Religious Broadcasters*, MM Dkt. Nos. 00-168 and 00-44 (filed Dec. 15, 2011), at pp. 6–9 (continued...)

No. 1 v. Reed, 130 S. Ct. 2811, 2822 (2010) (Alito, J., concurring) (“[F]acially valid disclosure requirements can impose heavy burdens on First Amendment rights in individual cases.”).

The Supreme Court “ha[s] repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment.” *Davis v. FEC*, 554 U.S. 724, 744 (2008) (quoting *Buckley v. Valeo*, 424 U.S. 1, 64 (1976) (per curiam)); accord *Nat’l Ass’n of Mfrs. v. Taylor*, 582 F.3d 1, 20 (D.C. Cir. 2009) (rejecting proposition that “repercussions from compelled disclosure can never outweigh the government’s interests in requiring it of a particular organization”). Indeed, the Court has invalidated regulations that seriously burden First Amendment rights absent compelling justification. *See, e.g., Brown v. Socialist Workers ’74 Campaign Comm. (Ohio)*, 459 U.S. 87 (1982). Contrary to these principles and the Court’s recognition that “[p]recision of regulation must be the touchstone” in the First Amendment context, *NAACP v. Button*, 371 U.S. 415, 438 (1963), the *Order* justifies the online political file requirement under the general notion that disclosure promotes, but does not chill, speech and discussion, *see Order* ¶ 80. This failure to conduct the relevant legal analysis un-

(online publication of issue ad-related inquiries will chill First Amendment rights, as demonstrated by harassment of supporters of Proposition 8 in California whose names were posted to a government website pursuant to state law).

der the First Amendment renders the *Order* arbitrary and capricious. *See Town of Barnstable, Mass. v. FAA*, 659 F.3d 28, 35–36 (D.C. Cir. 2011).

II. NAB’s Members Will Suffer Irreparable Harm Absent a Stay.

Absent a stay, NAB’s members will be required to post the rates they charge for specific advertising spots immediately to the Internet. Non-broadcast competitors will be able to determine in a matter of seconds exactly what prices local broadcast stations are charging for specific spots. As a result, they will acquire an unfair advantage over broadcasters in the competition for political and commercial advertising, just as a poker player who is able to peek at an opponent’s hand acquires an unfair advantage in a poker game. Political advertisers spend more than a billion dollars on television advertising in election years. *See, e.g., Anthony E. Varona, Toward a Broadband Public Interest Standard*, 61 ADMIN. L. REV. 1, 26 (2009). If the Commission’s *Order* allows non-broadcast media to shift even a small percentage of this advertising away from television, NAB members will lose millions of dollars in revenue. Broadcasters will have no means of recouping this lost revenue from the Commission or any other source. In addition, broadcasters will be unable to recoup the substantial costs of complying with *Order*.²⁷

²⁷ *See* Ex. 1, Drafts Declaration, at ¶¶ 8–14; Ex. 2, Tamerlano Declaration, at ¶¶ 8–14; Ex. 3, Baratta Declaration, at ¶¶ 8–13; Ex. 4, Wexler Declaration, at ¶¶ 8–11.

These losses constitute irreparable harm. Although economic harm generally does not constitute irreparable injury, “th[at] rule is based upon the presumption that ‘adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation.’ That presumption does not hold and the general rule does not apply” when, as here, the party seeking a stay cannot recover monetary damages. *Robertson v. Cartinhour*, 429 F. App’x 1, 3 (D.C. Cir. 2011) (internal citation omitted) (quoting *Va. Petroleum Jobbers Ass’n v. Fed. Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958)). NAB’s members are likely to suffer unrecoverable economic losses, and thus irreparable harm, if a stay is not entered prior to appeal.

III. The Balance of Hardships and the Public Interest Favor a Stay.

The balance of hardships and the public interest also favor a stay. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (“These [two] factors merge when the Government is the opposing party.”) A stay would leave the Commission’s current public file rules in effect pending NAB’s appeal, and thus no party would be injured by a stay. The existing rules ensure that information concerning political advertising, including rate information, is available in a public file. The Commission did not conclude that the existing rules are insufficient for candidates. Any benefit to others from immediate on-line access to detailed, current price information is outweighed by the serious harms that would likely result from that requirement.

The public interest is also not served by implementing a rule that is arbitrary and capricious, harmful to competition, and contrary to BCRA. Because the NAB has shown a likelihood of success on the merits, the public interest weighs in favor of injunctive relief. *See Serono Labs., Inc. v. Shalala*, 158 F.3d 1313, 1326 (D.C. Cir. 1998).

CONCLUSION

The Commission should stay the effective date of the *Order* prior to August 2, 2012, and pending the completion of judicial review.

Respectfully submitted,



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Counsel for Petitioner NAB

EXHIBIT 1:

Declaration of Janene Drafs

DECLARATION OF JANENE DRAFS

I, Janene Draf, declare as follows:

1. I am employed by Fisher Broadcasting – Seattle TV, L.L.C., the licensee of KOMO-TV, Seattle, Washington, as Vice President, Station Manager/General Sales Manager. I have personal knowledge of, and am competent to testify to, the matters set forth herein.
2. KOMO-TV is a television broadcast station operating in the Seattle-Tacoma Nielsen Designated Market Area (“DMA”), which is the 12th largest DMA. Fisher Broadcasting – Seattle TV, L.L.C. is an indirect wholly-owned subsidiary of Fisher Communications, Inc.
3. KOMO-TV regularly sells political advertising time to candidates, campaigns, and individuals or groups that air independent expenditure, issue advocacy, or electioneering communications. In the fall 2008 general election season, KOMO-TV aired approximately 4,805 local, state, and federal political advertisements during the 60-day window preceding the November 2008 general election. In the fall 2010 general election season, KOMO-TV aired approximately 6,716 local, state, and federal political advertisements during the 60-day window preceding the November 2010 general election. To date, KOMO-TV has booked approximately 710 local, state, and federal political advertisements in 2012 relating to primary and general elections.

4. A typical request made to KOMO-TV for the purchase of political time involves the following steps:
- a. A call or email comes to the station and is directed to a member of the station's Political team.
 - b. An advertising inquiry form is completed to the extent possible by a member of the station's Political team based on the information provide in the initial request.
 - c. A return call is made or email is sent by a member of KOMO-TV's Political team to determine dates, dayparts, programs, and class(es) and lengths of advertising time sought.
 - d. An assessment of inventory is done by the station's Political team to determine the rate needed based on time parameters, programs, dayparts, class(es) of time, and whether the requesting party is a legally-qualified candidate or a non-candidate.
 - e. Rates are submitted.
 - f. An advertising inquiry form is placed in the station's public file.

- g. A copy of the email (if email was used as the communications medium) with details is filed internally for reference and follow-up.
- h. The order is sent and evaluated; if changes to the requested order needed to be made as a result of a sell-out situation, those changes are sent.
- i. The final order is entered.
- j. National Association of Broadcasters (“NAB”) Form PB-17 (or other, equivalent form) is filled out and filed in the station’s public file.
- k. A confirmation is sent to the buyer via email or national electronic data entry system.
- l. A copy of the final order is placed in the station’s public file.
- m. Weekly invoices are placed in the station’s public file, as well as any revisions. Long-standing Commission precedent permits KOMO-TV to initially provide in its public file the information regarding the advertising as ordered by the candidate along with a notation that the station will, upon request, provide immediate assistance and access to the station logs or other definitive information concerning actual air time. The weekly invoices

that KOMO-TV places in the public file reconcile information regarding the actual, as-aired advertising with the information contained in the advertising order. To bridge the gap between the order and the weekly invoices, notation is made in KOMO-TV political file offering assistance and access to more definitive information regarding the as-aired schedule in instances where the weekly invoice has not yet been placed, in due course, in the public file.

5. The rate quoted for a political time request depends on whether the requester is a candidate, an issue-advertiser, or another advertiser, as well as the number of days left before the election, the availability of inventory and the class(es) of such inventory, relative demand, and other market conditions at the time the request is made. If the requester is a legally qualified candidate and the request is made during the 45 days preceding a primary election or the 60 days preceding a general election, the requester is quoted the lowest charge for the relevant class and amount of time. If the requester is not a legally qualified candidate or the request is made more than 45 days preceding a primary election or 60 days preceding a general election, the requester is typically quoted the general commercial advertising rate.

6. Requests for political time are handled both telephonically and electronically. For approximately 80 percent of the station's requests, correspondence and negotiations are done electronically via email. Communications and negotiations for the remainder (approximately 20 percent) are accomplished via phone or fax. It is not uncommon for the station or buyer to use the phone in following-up on communications that were initiated by email, and the 80-20 approximation accounts for such telephonic communication as well.

7. Estimated conservatively, for a typical political time request or order, KOMO-TV currently devotes 1-2 hours to filing relevant documents in the station's paper political file. In periods preceding elections, KOMO-TV will receive as many as 15 political time requests or revisions per day. Not only is the station's political file updated on a near-continuous basis during these periods to account for new requests and orders that are placed, but it is also regularly updated to account for the weekly reconciliation process that updates each order, as necessary, to specify the actual, as-aired schedule, rates, times, days, and dayparts, as described above.

8. Uploading information kept in the station's political file to an FCC-hosted website will require the following additional steps:

- a. All documents need to be printed.

- b. Documents need to be scanned for uniform conversion to PDF format.
- c. PDF version of documents need to be reviewed to ensure legibility, completeness, and that no pages were stuck together, folded, or skewed during the scanning process.
- d. Documents need to be uploaded to FCC site.

9. KOMO-TV estimates that these additional steps will increase the time devoted to maintaining the station's political file with respect to a typical political time request or order by approximately 30 minutes. We expect that this same time would be required for each revision of an order and again for weekly reconciliation. It is common for orders to be revised as many as 3 to 4 times daily in the days leading up to an election. This would essentially double the time and cost devoted to maintaining the station's political file.

10. In order to upload political file information to an FCC-hosted online public file, KOMO-TV will incur both ongoing and one-time expenses. One-time expenses of approximately \$4,000 include the need to invest in a new personal computer, dedicated scanner and fax machine. (As with all communications hardware, these expenses are not really one-time expenses but rather will be cyclical expenses that are repeated perhaps as often as once every 5 years or so.) In addition, in terms of ongoing expenses, in order for KOMO-TV to upload

political file information in a timely manner, the station will need to hire up to one additional staff person at a minimum of 30 hours per week plus benefits, depending on the proximity to the election, and install an additional dedicated phone line with recurring monthly charges of approximately \$350 or more. These ongoing needs translate to an additional expenditure of approximately \$45,000 in personnel cost and \$4,200 in phone fees, for total additional, ongoing annual expenses of approximately \$49,200.

11. Given the asymmetrical nature of the FCC's new requirements, posting detailed advertising rate information immediately to an FCC-hosted website will result in a substantial loss in advertising revenue to KOMO-TV. This is particularly true in any political selling season and especially in the months leading up to a presidential election.

12. KOMO-TV competes with cable and satellite television operators, as well as other media, in advertising markets. If KOMO-TV is forced to disclose its political advertising rates on the Internet in real time, its competitors will be able to undercut these rates. This will place KOMO-TV at a competitive disadvantage in political advertising markets. KOMO-TV will not know the rates offered by its competitors, but its competitors will know the rates offered by KOMO-TV.

13. When the lowest unit charge is not required by law because the request is made either by a non-candidate or more than 45 days before a primary

election or 60 days before a general election, KOMO-TV typically charges requesters the prevailing commercial advertising rate for political time. The requirement that KOMO-TV post political advertising rate information in real-time on the Internet will allow KOMO-TV's competitors to infer in real-time the general commercial advertising rate offered by KOMO-TV. This will place KOMO-TV at a severe competitive disadvantage in selling general commercial advertising spots.

14. Advertising revenues are critical to sustaining KOMO-TV's financial viability. Advertisers that become aware of the lowest unit charge rates will seek to pay the same rates for general commercial advertising. The "lowest unit charge" is the lowest rate for each class of time that KOMO-TV charges its best commercial advertisers who purchase the greatest volume of advertising, thereby earning the highest volume discount for such advertising. A one-time-only advertiser or other minimal-volume customer that has access to this kind of information would use this knowledge to exert pressure on KOMO-TV to obtain lower advertising rates with discount privileges similar to those afforded to KOMO-TV's highest-volume customers but without offering similar purchasing volume. As a result, we expect KOMO-TV to experience both (i) pressure to meet the lowest unit charge for all advertisers, and (ii) losses to competing advertising outlets that learn of and undercut KOMO-TV's rates. KOMO-TV expects these

circumstances to affect its average advertising rates and cause them to be depressed by up to 15 percent. Thus, if the new rule goes into effect, by our estimates KOMO-TV's annual revenues will decline by up to 15 percent, which translates into a loss of up to approximately \$8.1 million annually for KOMO-TV.

[signature on following page]

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 29th day of June, 2012, in Seattle, Washington.



Janene Drafs, Vice President, Station
Manager & General Sales Manager,
Fisher Broadcasting – Seattle TV,
L.L.C. (licensee of KOMO-TV)

EXHIBIT 2:

Declaration of John Tamerlano

DECLARATION OF JOHN TAMERLANO

I, John Tamerlano, declare as follows:

1. I am employed by Fisher Broadcasting – Portland TV, L.L.C., the licensee of KATU(TV), Portland, Oregon (“KATU”), as Senior Vice President/General Manager. I have personal knowledge of, and am competent to testify to, the matters set forth herein.

2. KATU is a television broadcast station operating in the Portland, Oregon, Nielsen Designated Market Area (“DMA”), which is the 22nd largest DMA. Fisher Broadcasting – Portland TV, L.L.C. is an indirect wholly-owned subsidiary of Fisher Communications, Inc.

3. KATU regularly sells political advertising time to candidates, campaigns, and individuals or groups that air independent expenditure, issue advocacy, or electioneering communications. In the fall 2008 general election season, KATU aired approximately 7,442 local, state, and federal political advertisements during the 60-day window preceding the November 2008 general election. In the fall 2010 general election season, KATU aired approximately 8,898 local, state, and federal political advertisements during the 60-day window preceding the November 2010 general election.

4. A typical request made to KATU for the purchase of political advertising time involves the following steps:

- a. A call or email comes to the station and is directed to a member of the station's Political team.
- b. An advertising inquiry form is completed to the extent possible by a member of the station's Political team based on the information provided in the initial request.
- c. A return call is made or email is sent by a member of KATU's Political team to determine dates, dayparts, programs, and class(es) and lengths of advertising time requested.
- d. An assessment of inventory is done by the station's Political team to determine the rate needed based on time parameters, programs, dayparts, class(es) of time, and whether the requesting party is a legally-qualified candidate or a non-candidate.
- e. Rates are submitted.
- f. An advertising inquiry form is placed in the station's public file.
- g. A copy of the email (if email was used as the communications medium) with details is filed internally for reference and follow-up.

- h. The order is sent and evaluated; if changes to the requested order needed to be made as a result of a sell-out situation, those changes are sent.
- i. The final order is entered.
- j. National Association of Broadcasters (“NAB”) Form PB-17 (or other, equivalent form) is filled out and filed in the station’s public file.
- k. A confirmation is sent to the buyer via email or national electronic data entry system.
- l. A copy of the final order is placed in the station’s public file.
- m. Weekly invoices are placed in the station’s public file as well as any revisions. Long-standing Commission precedent permits KATU to initially provide in its public file the information regarding the advertising *as ordered* by the candidate along with a notation that the station will, upon request, provide immediate assistance and access to the station logs or other definitive information concerning actual air time. The weekly invoices that KATU places in the public file reconcile information regarding the *actual, as-aired advertising* with the information contained in the advertising *order*. To bridge the

gap between the order and the weekly invoices, notation is made in KATU political file offering assistance and access to more definitive information regarding the as-aired schedule in instances where the weekly invoice has not yet been placed, in due course, in the public file.

5. The rate quoted for a political time request depends on whether the requester is a candidate, an issue-advertiser, or another advertiser, as well as the number of days left before the election, the availability of inventory and the class(es) of such inventory, relative demand, and other market conditions at the time the request is made. If the requester is a legally qualified candidate and the request is made during the 45 days preceding a primary election or the 60 days preceding a general election, the requester is quoted the lowest charge for the relevant class and amount of time. If the requester is not a legally qualified candidate or the request is made more than 45 days preceding a primary election or 60 days preceding a general election, the requester is typically quoted the general commercial advertising rate.

6. Requests for political time are handled both telephonically and electronically. For approximately 80 percent of the station's requests, correspondence and negotiations are done electronically via email. Communications and negotiations for the remainder (approximately 20 percent)

are accomplished via phone or fax. It is not uncommon for the station or buyer to use the phone in following-up on communications that were initiated by email, and the 80-20 approximation accounts for such telephonic communication as well.

7. Estimated conservatively, for a typical political time request or order, KATU currently devotes 1-2 hours to filing relevant documents in the station's paper political file. In periods preceding elections, KATU will receive as many as 15 political time requests or revisions per day. Not only is the station's political file updated on a near-continuous basis during these periods to account for new requests and orders that are placed, but it is also regularly updated to account for the weekly reconciliation process that updates each order, as necessary, to specify the actual, as-aired schedule, rates, times, days, and dayparts, as described above.

8. Uploading information kept in the station's political file to an FCC-hosted website will require the following additional steps:

- a. All documents need to be printed.
- b. Documents need to be scanned for uniform conversion to PDF format.
- c. PDF version of documents need to be reviewed to ensure legibility, completeness, and that no pages were stuck together, folded, or skewed during the scanning process.
- d. Documents need to be uploaded to FCC site.

9. KATU estimates that these additional steps will increase the time devoted to maintaining the station's political file with respect to a typical political time request or order by approximately 30 minutes. We expect that this same time would be required for each revision of an order and again for weekly reconciliation. It is common for orders to be revised as many as 3 to 4 times daily in the days leading up to an election. This would essentially double the time and cost devoted to maintaining the political file.

10. In order to upload political file information to an FCC-hosted online public file, KATU will incur both ongoing and one-time expenses. One-time expenses of approximately \$4,000 include the need to invest in a new personal computer, dedicated scanner and fax machine. (As with all communications hardware, these expenses are not really one-time expenses but rather will be cyclical expenses that are repeated perhaps as often as once every 5 years or so.) In addition, in terms of ongoing expenses, in order for KATU to upload political file information in a timely manner, the station will need to hire up to one additional staff person at a minimum of 30 hours per week plus benefits, depending on the proximity to the election, and install an additional dedicated phone line with recurring monthly charges of approximately \$350 or more. These ongoing needs translate to an additional expenditure of approximately \$44,100 in

personnel cost and \$4,200 in phone fees, for total additional, ongoing annual expenses of approximately \$48,300.

11. Given the asymmetrical nature of the FCC's new requirements, posting detailed advertising rate information immediately to an FCC-hosted website will result in a substantial loss in advertising revenue to KATU. This is particularly true in any political selling season and especially in the months leading up to a presidential election.

12. KATU competes with cable and satellite television operators, as well as other media, in advertising markets. If KATU is forced to disclose its political advertising rates on the Internet in real time, its competitors will be able to undercut these rates. This will place KATU at a competitive disadvantage in political advertising markets. KATU will not know the rates offered by its competitors, but its competitors will know the rates offered by KATU.

13. When the lowest unit charge is not required by law because the request is made either by a non-candidate or more than 45 days before a primary election or 60 days before a general election, KATU typically charges requesters the prevailing commercial advertising rate for political time. The requirement that KATU post political advertising rate information in real-time on the Internet will allow KATU's competitors to infer in real-time the general commercial advertising

rate offered by KATU. This will place KATU at a severe competitive disadvantage in selling general commercial advertising spots.

14. Advertising revenues are critical to sustaining KATU's financial viability. Advertisers that become aware of the lowest unit charge rates will seek to pay the same rates for general commercial advertising. The "lowest unit charge" is the lowest rate for each class of time that KATU charges its best commercial advertisers who purchase the greatest volume of advertising, thereby earning the highest volume discount for such advertising. A one-time-only advertiser or other minimal-volume customer that has access to this kind of information would use this knowledge to exert pressure on KATU to obtain lower advertising rates with discount privileges similar to those afforded to KATU's highest-volume customers but without offering similar purchasing volume. As a result, we expect KATU to experience both (i) pressure to meet the lowest unit charge for all advertisers, and (ii) losses to competing advertising outlets that learn of and undercut KATU's rates. KATU expects these circumstances to affect its average advertising rates and cause them to be depressed by up to 15 percent. Thus, if the new rule goes into effect, by our estimates KATU's annual revenues will decline by up to 15 percent, which translates into a loss of up to approximately \$4.4 million annually for KATU.

[signature on following page]

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 29th day of June, 2012, in Portland, Oregon.



John Tamerlano, Senior Vice
President, General Manager, Fisher
Broadcasting – Portland TV, L.L.C.
(licensee of KATU)

EXHIBIT 3:

Declaration of Pamela Baratta

DECLARATION OF PAMELA BARATTA

I, Pamela Baratta declare as follows:

1. I am employed by Media General, Inc. (“Media General”) as Vice President Sales Operations . I have personal knowledge of, and am competent to testify to, the matters set forth herein.
2. Media General owns and/or operates eighteen (18) full-power television broadcast stations in seventeen (17) different Designated Market Areas (“DMAs”) across the United States, six (6) of these stations are located in the fifty (50) largest DMAs.
3. Media General regularly sells political advertising time to candidates, campaigns, and individuals or groups that air independent expenditure, issue advocacy, or electioneering communications. In the fall 2008 general election season, fourteen of Media General’s broadcast stations aired approximately 36,924 local, state, and federal political advertisements during the 60-day window preceding the November 2008 general election. In the fall 2010 general election season, Media General aired approximately 60,603 local, state, and federal political advertisements during the 60-day window preceding the November 2010 general election. To date, Media General has aired approximately 27,004 local, state, and federal political advertisements in 2012 relating to primary and general elections.

4. A typical request for political time involves the two-step process of documentation of the request for the political file, as well as fulfillment of the necessary information requested by the advertiser. Upon receipt of a request for political advertising, the station receiving the request immediately prepares a Record of Request form that fully documents that a political advertising time request has been made by a candidate intending to advertise on the station. This form is then filed in the station's public file as quickly as possible. Upon completion of filing the form, the station assembles all necessary information that the political advertiser has requested. This information typically includes the station's contact information, political disclosure policies, and programming information, including specified dates, times, and programming specials. Furthermore, the station provides requested ratings that demonstrate specific demographic audience information for each specified program as well as the corresponding rates by program. When advertising time is purchased, the station also will request that the political advertiser fill out the standard NAB Form and return it to the station.

5. The rate quoted for the political time request depends on the identity of the requester and the number of days left before the election. If the requester is a legally qualified candidate and the request is made during the 45 days preceding a primary election or the 60 days preceding a general election, the requester is

quoted the lowest charge for the relevant class of time and spot duration. If the requester is not a legally qualified candidate or the request is made more than 45 days preceding a primary election or 60 days preceding a general election, the requester is typically quoted the general commercial advertising rate.

6. Requests for political time are handled both telephonically and electronically, and are handled in the same manner in either case. Approximately ninety percent (90%) of all political requests are handled electronically.

Electronic requests are typically more time consuming due to incomplete information from the requestor of advertising time. This results in additional emails and, in most cases, follow-up telephone calls until all information for the political process is gathered and all steps are completed.

7. In periods preceding elections, a Media General station may receive several hundred political time requests, resulting in as many as two hundred sixty (260) orders for political time. The political file is updated on a near-continuous basis during these periods.

8. Currently, the political file contains the Record of Request, the standard NAB form, a copy of the payment, a hard copy of the broadcast order, and all revisions to the order that are then attached to the original order in descending order by revision date. Each order is revised an average of four (4) times. Uploading information kept in the political file to an FCC-hosted website

will require each of these documents to be manually scanned and accurately filed in the correct electronic folder or subfolder on the website. In addition to manual scans of the information noted above, the stations will need to scan each of the individual documents that currently are generated by the station's invoicing and contracting systems, because those systems are not compatible with an online version of the political file. As an example, using the technology currently available to the Media General stations, it takes approximately five (5) minutes to convert one contract into a .pdf file to be uploaded to the website. This process must be performed manually on a document-by-document basis.

9. Estimated conservatively, these additional steps will increase the time devoted to maintaining the political file with respect to a typical political time request or order by thirty (30) minutes. Using data from 2010 (a year without a presidential election), this process would add an estimated one hundred (100) hours of work per week across all Media General stations during the sixteen weeks prior to an election.

10. In order to upload political file information in a timely manner, Media General may need to acquire additional bandwidth and hire up to 16 additional temporary staff persons, depending on the proximity to the election.

11. Posting detailed advertising rate information immediately to an FCC-hosted website will result in a substantial loss in advertising revenue to Media

General and cause irreparable harm. This is particularly true in the months leading up to a presidential election.

12. Media General competes with cable and satellite television operators, as well as other media, in advertising markets. If Media General is forced to disclose its political advertising rates on the Internet in real time, it will place Media General at a competitive disadvantage in political advertising markets. Media General will not know the rates offered by its competitors, but its competitors will know the rates offered by Media General.

13. When the lowest unit charge is not required by law because the request is made either by a non-candidate or more than 45 days before a primary election or 60 days before a general election, Media General typically charges requesters the prevailing commercial advertising rate for political time. This will allow Media General's competitors to infer in real-time the general commercial advertising rate offered by Media General. This will place Media General at a severe competitive disadvantage in selling general commercial advertising spots.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 2 day of July, 2012, in Richmond, Virginia.


Pamela Baratta
Pamela Baratta

EXHIBIT 4:

Declaration of Steve Wexler

DECLARATION OF STEVE WEXLER

I, Steve Wexler, declare as follows:

1. I am an Executive Vice President of Journal Broadcast Group. I have personal knowledge of, and am competent to testify to, the matters set forth herein.

2. Journal operates fourteen television stations including Station WTMJ-TV, an NBC affiliate serving the Milwaukee Wisconsin DMA and Station KTNV-TV, an ABC affiliate serving the Las Vegas Nevada DMA (referred to herein individually as a “Journal Station” and collectively as the “Journal Stations”). According to reports prepared by the Nielsen Company, Milwaukee is the 34th largest DMA and Las Vegas is the 40th largest DMA.

3. The Journal Stations sell substantial amounts of political advertising time to candidates, campaigns, and individuals or groups that air independent expenditure, issue advocacy, or electioneering communications. In the fall 2010 general election season, Station WTMJ-TV aired approximately 3413 advertisements for local, state, and federal political candidates during the 60-day window preceding the November 2010 general election (September 3 –November 2, 2010) and approximately 1920 political issue advertisements during the same window. Station KTNV-TV aired approximately 6054 advertisements for local, state, and federal political candidates and approximately 2561 political issue advertisements during this 60-day window. During the two weeks prior to the

general election in 2010, political candidate and issue advertisements accounted for approximately 76 percent of Station KTNV-TV's revenues and approximately 46 percent of Station WTMJ-TV's revenues.

4. A typical request for political time involves the following steps.
 - a. Calls or emails from political candidate and issue advertisers or their representatives are directed to sales managers and reviewed.
 - b. A copy of the Journal Station's political disclosure statement and current political rate card is sent by mail or email to the advertiser or its agency and the advertiser is requested to sign the political disclosure statement.
 - c. The signed disclosure statement is returned to the station.
 - d. Numerous calls and/or emails are exchanged between the Journal Stations' sales managers and the representative or agent of the political or issue advertiser to determine the dates, programs, and classes of time the advertiser wishes to purchase and the Journal Station's available inventory.
 - e. An order form is completed and reviewed by the Journal Station's sales manager and the political advertiser is requested to complete an NAB PB-17 form.
 - f. The NAB PB-17 form is reviewed by the Journal Station's sales manager and if necessary, additional information is requested.
 - g. The final order is entered.
 - h. Frequently changes to the order are made by the political advertiser to request different dates, times and classes of time.
 - i. If a Journal Station's political rate card is updated, a new rate card is sent to the political advertiser and the process described in (d) and (e) above is repeated.

- j. The signed political disclosure statement, order form and NAB PB-17 form for each order (as well as any revisions to the order) are placed in the Journal Station's public file.
- k. Following the issuance of invoices for political buys, the invoices are also placed in the Journal Station's public file.

5. The rate quoted for the political time request depends on the identity of the advertiser and the number of days left before the election. If the advertiser is a legally qualified candidate and the request is made during the 45 days preceding a primary election or the 60 days preceding a general election, the advertiser is quoted the lowest charge for the relevant class and amount of time. If the advertiser is not a legally qualified candidate or the request is made more than 45 days preceding a primary election or 60 days preceding a general election, the advertiser is typically quoted the general commercial advertising rate.

6. Requests for political time are handled both telephonically and electronically depending on whom the candidate is and/or what agency is representing the candidate or issue advertiser.

7. Estimated conservatively, the Journal Stations currently devote on average at least 2 hours per day to filing relevant documents in the paper political file. This time commitment can increase significantly during the last two weeks preceding an election because of the number of political advertisements that are ordered and aired. In the Fall of 2010, during the week before the general election Station KTNV-TV aired as many as 175 political advertisements per day for

political candidates and additional advertisements for issue advertisers. The political file is updated on a near-continuous basis during these periods and requires one person devoting at least five or six hours per day.

8. Uploading information kept in the political file to an FCC-hosted website will require the following additional steps:

- a. All Orders, Order revisions, NAB PB-17 forms and invoices will need to be scanned for conversion to PDFs.
- b. PDF documents need to be reviewed to ensure that they have been scanned accurately.
- c. Candidate folders and subfolders need to be set up on the FCC's electronic public file site.
- d. Scanned PDF documents need to be uploaded into the correct folders and subfolders on the FCC's electronic public file site.

9. Estimated conservatively, these additional steps will require an additional one to two hours per day and likely three to four hours per day during the two week period prior to an election. This would essentially double the time and cost devoted to maintaining the political file.

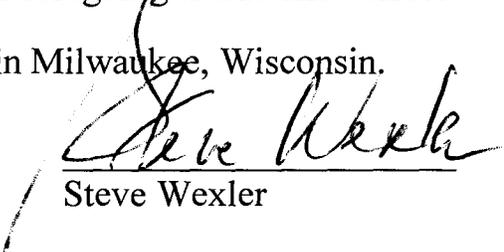
10. In order to upload political file information in a timely manner, each of the Journal Stations would need to hire at least one additional staff person to work at least thirty hours per week, and, depending on the proximity to the election, would anticipate having to pay overtime to other current employees. The Journal Stations estimate that the cost of compensation and benefits for an

additional employee and overtime to existing employees would be approximately \$40,000 to \$50,000 per year for each of the Journal Stations.

11. The Journal Stations compete with cable and satellite television operators, as well as other media, in advertising markets. If the Journal Stations are forced to disclose their political advertising rates on the Internet in real time, their competitors will be able to undercut these rates. This will place the Journal Stations at a competitive disadvantage in political advertising markets.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 2nd day of July, 2012, in Milwaukee, Wisconsin.


Steve Wexler